



September 25, 2002

Ms. Dona G. Hamilton  
University of Houston System  
311 E. Cullen Building  
Houston, Texas 77204-2028

OR2002-5413

Dear Ms. Hamilton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169385.

The University of Houston Police Department (the “department”) received a request for the following information:

- 1) All mobile data terminal transmissions, dispatch tapes and logs, 911 tapes, and all call slips in the State of Texas v. Ronnie Braxton . . . ;
- 2) All writings and recordings . . . pertaining to law enforcement’s routine investigative procedures for the offense of transportation of suspects/resisting arrest/assault on [a] peace officer;
- 3) All law enforcement records . . . in the State of Texas v. Ronnie Braxton . . . ;
- 4) The number of years on the police force and various divisions the [specified] Officers have worked for;
- 5) Any and all disciplinary actions and or grievances filed within the department and or by an independent outside entity (individual, organization, etc.); and
- 6) Any and all psychological evaluation, reports, etc. pertaining to the [specified] officers.

You state that you will release information responsive to categories one and four to the requestor. However, you claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

In regard to information responsive to category two of the request, you claim section 552.108. Section 552.108(b)(1) of the Government Code excepts from public disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution” if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108. When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986). We have previously held that portions of police procedures are excepted under section 552.108(b)(1) because release of the procedures would impair an officer’s ability to enforce the law and would place individuals at an advantage in confrontations with the police. *See* Open Records Decision No. 531 (1989). However, portions of the procedures that relate to generally known common-law rules, constitutional limitations, or Penal Code provisions are deemed public information. *Id.* at 3.

With respect to the submitted training materials, Exhibits C and D, you argue that manuals that deal with the use of force are responsive to the request for information, and the release of these manuals “could impair [an] officers’ ability to safely arrest suspects and could place suspects in an advantage over the officers in confrontations.” After reviewing your arguments and the submitted information, we conclude that you may withhold most of Exhibits C and D. *See id.*; Gov’t Code § 552.108(b)(1). However, we have marked the information in Exhibits C and D that must be released as it will not impair an officer’s ability to enforce the law.

You also claim section 552.108 in regard to Exhibit E, information responsive to category three of the request. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). You inform us that Exhibit E pertains to a pending criminal investigation and prosecution. We therefore believe that the release of this information “would interfere with the detection, investigation, or prosecution of crime.” *Id.* Thus, you may withhold Exhibit E from disclosure based on section 552.108(a)(1).

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit E from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In regard to Exhibit F, responsive information to category five of the request, you assert section 552.101 in conjunction with the common-law right to privacy. Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right to privacy. Information is protected under the common-law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review of Exhibit F, we conclude that it consists primarily of information regarding the employment of the peace officers in question and, thus, is of legitimate concern to the public. *See* Open Records Decision Nos. 484 (1987) (public's interest in knowing how police departments resolve complaints against police officer ordinarily outweighs officer's privacy interest), 478 (1987) (absent special circumstances, names are not "intimate" information), 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Therefore, most of Exhibit F may not be withheld under section 552.101 in conjunction with the common-law right to privacy. However, where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Exhibit F contains criminal history record information. Thus, we conclude that you must withhold the information we have marked in Exhibit F under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

Further, Exhibit F contains social security numbers that may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 (1994). It is not

apparent to us that the social security numbers contained in the report at issue were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, the department should ensure that the numbers were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, Exhibit F also reveals information that is excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Thus, you must withhold the Texas drivers' license numbers, license plate numbers, and vehicle identification numbers we have marked pursuant to section 552.130 of the Government Code.

Category six of the request for information asks for the declaration of psychological and emotional health of the officers in question. Section 1701.306 of the Occupations Code, which makes such a declaration confidential, provides in part:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought . . . .

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306 (emphasis added). Therefore, Exhibit B is made confidential by section 1701.306 of the Occupations Code must be withheld under section 552.101 of the Government Code.

In summary, we conclude that: 1) you may withhold the majority of Exhibits C and D under section 552.108(b)(1); 2) with the exception of the basic front page offense and arrest

information, you may withhold Exhibit E based on section 552.108(a)(1); 3) in Exhibit F, the criminal history record information we have marked must be withheld under section 552.101 in conjunction with common-law privacy, the social security numbers might be excepted from required public disclosure under section 552.101 in conjunction with federal law, and you must withhold the Texas drivers' license numbers, license plate numbers, and vehicle identification numbers we have marked pursuant to section 552.130; and 4) Exhibit B is made confidential by section 1701.306 of the Occupations Code must be withheld under section 552.101 of the Government Code.<sup>2</sup> The marked information in Exhibits C and D and all remaining information in Exhibit F must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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<sup>2</sup>As we are able to make this determination, we need not address your argument under section 552.117 of the Government Code.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 169385

Enc: Submitted documents

c: Mr. Lance C. Hamm  
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(w/o enclosures)